

### REMARKS

Applicants have carefully reviewed the Office Action mailed February 26, 2007. In response to the Office Action, Applicants have amended claims 1 and 2. No new matter has been added. Support can be found, for example, on page 10 lines 17-21, and throughout the specification, original claims, and drawing figures. Applicants respectfully request reconsideration of the present application in view of the above amendments and the following remarks.

### Election of Species

The requirement for an election of species has still been deemed proper and has been made final. Specifically, the Examiner asserts that, even though claims 3 and 4 depend from claim 2, they independently in themselves comprise special technical features that are different from one another.

In this regard, applicants note that the subject application is a national phase filing under Section 371. According to the MPEP Section 1850, "unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims... If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims." The election of species requirement is therefore not proper.

### Claim Rejections – 35 U.S.C. §112

Claims 87-91 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner, noting that claim 3 depends on claim 2, states that claim 3 sets forth "the elastic element is designed as an elastomer peripheral moulding of the frame and/or inner part". The Examiner asserts that this is incorrect terminology because claim 2 requires the elastic element belonging to the bipolar

plate and thus the limitations in claim 3 can not include the elastic element being part of the frame.

Applicants disagree with the Examiner's position, as claim 1 indicates that the "bipolar plate comprises a frame which is open in the central region as well as an inner part." Claim 2 previously indicated only that an elastic element also belonged to the bipolar plate. Claim 3 further simply defines claim 2 by indicating that this elastic element is an elastomer peripheral moulding of the frame and/or inner part.

While the claims were not indefinite, applicants have amended claim 2 to delete the unnecessary phrase "belonging to the bipolar plate" in order to further avoid any confusion. The claims fully comply with 35 USC 112, second paragraph, and this rejection should be withdrawn.

#### Claim Rejections – 35 U.S.C. § 102

Claims 1-2 and 16-23 have been rejected under 35 U.S.C. 102(b) as being anticipated by FR-28 10795 ('795). This rejection is respectfully traversed. According to the MPEP, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See MPEP 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631). Put another way, for there to be anticipation, "the identical invention must be shown in as complete detail as it is contained in the ...claim." *Richardson v. Suzuki Motor Co.*, 9 UPDQ 2d 1913, 1920 (Fed Cir. 1989).

Amended claim 1 recites "A bipolar plate for fuel cell stacks which comprises..., a frame which is open in the central region as well as an inner part arranged in the central region, wherein the frame and the inner part are elastically coupled to one another utilizing an elastomer."

In the Office Action, the Examiner asserts that "The frame is elastically connected to the body in two ways. The first is set forth in lines 14-17 of page 9 of the English translation where it states that the frame and body are secured. The second way is via the stud 34, as seen in Figure 2, which stud elastically couples the frame to the body."

Neither of these points supports a finding that claim 1 is anticipated by '759. As correctly noted by the Examiner page 9 lines 14-71 of the translation of '759 teaches that the frame and body "are secured." The Examiner does not even allege that this section of '759 describes a frame and inner part that are elastically coupled to one another utilizing an elastomer, are defined by claim 1. This section of '759 surely fails to teach or even suggest the identical invention in as complete detail as is contained in the claim.

Moreover, the disclosure of '759 taken as whole fails to disclose a frame and inner part that are elastically coupled to one another utilizing an elastomer, are defined by claim 1. The Examiner asserts that the stud 34, seen in Figure 2, "elastically couples the frame to the body," but fails to identify anything in '759 to support this conclusion.

In fact, there is absolutely no indication in '759 that the studs 34 act to "elastically couple" the frame to the body, nor is there any suggestion that the studs 34 are formed of an elastomer. In order to fabricate a bipolar plate according to '759, one first has must build the framework, which consists of the two thin and perforated metal plates (30). These two metal plates are separated by 1-2 mm, a separation defined by the studs (32), (35) and the contact studs (34), which are placed between the two metal plates. While '759 is silent as to any proposed material for the studs 34, the function of these contact studs (34) is to support the two metal plates and to define the space of 1-2 mm for the coolant between the thin metal plates. As a result, forming the studs 34 from an elastomer would very unfavorably impact the stated function of the studs.

For the reasons discussed, FR-28 10795 fails to teach or suggest each and every limitation found in claim 1, and therefore does not anticipate claim 1. The remaining claims depend from claim 1, either directly or indirectly, and are patentable of '759 at least on that basis. The rejections under 102(b) should be withdrawn.

### Conclusion

In view of the above, each of the presently pending claims in this application is in condition for allowance. If, however, there are any outstanding issues that can be resolved

by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donald A. Schurr', written over a horizontal line.

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